

U.S. Patent Application Serial No. **10/715,126**
Amendment filed February 27, 2006
Reply to OA dated November 29, 2005

REMARKS:

Claims 2, 3, and 6-8 are currently pending. Claims 2 and 3 are currently being considered, both of which have been amended. Claims 6-8 have been withdrawn from consideration. Claims 1, 4, and 5 have been canceled without prejudice or disclaimer as to their subject matter.

Claims 1-5 stand rejected under the second paragraph of 35 USC 112 as being indefinite.

Applicants respectfully traverse this rejection, for the following reasons.

Claim 2, as amended, clearly shows a relationship between an incubator and a chamber. Claim 3 depends from claim 2. Accordingly, in view of the above, Applicants respectfully submit that this rejection under 35 USC 112 should be withdrawn.

Claims 1-5 stand rejected under 35 USC 102(b) as anticipated by WO 00/53720 (**Bochner**).

Applicants respectfully traverse this rejection, for the following reasons.

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The Examiner suggests that **Bochner** describes “The conveyor (114) moves the containers out of the accommodating portions of the shelves to a specified position centrally located in the chamber for imaging by the camera (108)”. However, the containers of **Bochner** are not drawn out by the conveyor to the same central position.

It appears in **Bochner** that the containers move to different centrally-located positions on levels with different shelves.

Bochner discloses on page 7, lines 4-6 that “the camera may be mounted for movement and can be controlled to move into positions appropriate for the imaging of samples on different shelves.” That means that in **Bochner**, positions (heights) for the imaging are different depending on shelves having the containers thereon.

Imaging conditions (illuminance, temperature, humidity, CO₂ concentration, etc.) are not constant depending on locations in the chamber. Accordingly, it is desirable to have all samples imaged at the same position if possible. Thus, the subject invention, in which the container is always moved to the same position for photography, is superior to **Bochner** because variations of the conditions depending on location in the chamber do not affect photography in the subject invention.

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In view of the above, **Bochner** fails to describe, teach, or suggest the following features set forth in claim 2, as amended: “a camera being attached in the chamber and facing a specified position wherein the culture container is to be photographed, the sample on the culture container being photographable by transporting the culture container to the specified position”, in combination with the other claimed features.

Thus, in view of the above, Applicants respectfully submit that the rejection under 35 USC 102(b) is improper and should be withdrawn.

In view of the aforementioned amendments and accompanying remarks, all claims currently being considered are respectfully believed to be in condition for allowance, which action, at an early date, is respectfully requested.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the Applicants' undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

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In the event that this paper is not timely filed, the Applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due now or in the future with respect to this application, to Deposit Account No. 01-2340.

Respectfully submitted,
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